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# (17,444.)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1899.

No. 330.

FRITZ CONTZEN, APPELLANT,

*vs.*

THE UNITED STATES AND THE APACHE INDIANS.

APPEAL FROM THE COURT OF CLAIMS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 26, 1899.

1 In the Court of Claims.

FRITZ CONTZEN
*vs.*
THE UNITED STATES. } No. 3358. Ind. Dep.

INDIAN DEPREDATION CLAIM. Filed July 18, 1891.—J. R.

I.—*Petition.*

Your petitioner respectfully represents:

That in the year 1861 he resided about three miles from the church of San Xavier del Bal, which was then about twelve miles above Tucson, in Arizona Territory. That he had his ranch stocked with several hundred head of cattle, some mules, some horses, and one blooded horse.

Your petitioner avers that in the spring or early summer of 1861 the United States troops, which had been stationed in the southern part of Arizona, and which gave protection to the settlers, were withdrawn, whereby the settlers became exposed to the depredation of Indians.

Your petitioner further avers that on October 20, 1861, a band of White Mountain Apache Indians raided the settlement at
2 San Xavier, and stole from the ranch of petitioner cattle, horses, and mules, the property of petitioner. That at the time said animals were stolen they were herded and carefully guarded in a strong corral, and the loss was not occasioned by any carelessness or negligence on the part of the petitioner or his employés.

Said Indians were not on their reservation, or any reservation, at the time of the raid; that petitioner took all usual precaution in guarding his live stock, but there was no reason to suppose that any Indians were near said ranch at the time of said raid.

That the property so stolen was as follows:

| | |
|---|---|
| 376 cows, at $25.00 | $9,400 00 |
| 11 horses, at $50.00 | 550 00 |
| 3 mules, at $60.00 | 180 00 |
| 1 blooded horse | 200 00 |
| Total | $10,330 00 |

Your petitioner alleges that he has never recovered any of said stock, and has heretofore received no compensation for the losses in any form.

Your petitioner alleges that this claim was filed in the Indian Office, a Bureau of the Interior Department, on January 6, 1888, and was pending in said Interior Department on March 3, 1891.

Therefore your petitioner prays judgment against the United States for the sum of ten thousand three hundred and thirty dollars ($10,330). Your petitioner avers that no assignment of said claim,

or any part thereof, has been made. The said claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets; that petitioner is a naturalized citizen of the United States, and has at all times borne true
3 allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

FRITZ CONTZEN,
By A. T. BRITTON, *Attorney.*

A. T. BRITTON, *Attorney.*

TERRITORY OF ARIZONA, } ss:
*County of* ——, }

Fritz Contzen, being first duly sworn, says that he is the claimant in the foregoing petition, and that all the statements of fact therein contained are true.

FRITZ CONTZEN.

Subscribed and sworn to before me, Brewster Cameron, clerk of the district court, 1st judicial district of Arizona, at Tucson, this 10th day of July, 1891.

[SEAL.]

BREWSTER CAMERON, *Clerk,*
By SANTIAGO AMSA,
*Deputy Clerk.*

Post-office address of claimant, Fritz Contzen, Tucson, Arizona; of attorney for claimant, A. T. Britton, No. 622 F St. N. W., Washington, D. C.

4 II.—*Motion to Amend Petition and Allowance of Same. Filed April 19, 1894.*

FRITZ CONTZEN
*v.*
THE UNITED STATES. } Ind. Dep. No. 3358.

1. Now comes the claimant, by his attorney, A. T. Britton, and moves the court that the style of the above suit be amended by adding the words and Apache Indians after the word States.

2. And that the petition in said case be further amended by adding, after the word "raid," in the second paragraph of the 2d page (as printed), the words, and the said Indians were in amity and under treaty relations with the United States on the date of the depredation.

A. T. BRITTON,
*Attorney of Record.*

J. W. DOUGLASS, *Counsel.*

April 19, 1894.
Allowed.

WILLIAM A. RICHARDSON,
*Chief Justice.*

5 III.—*Defendants' Plea to Jurisdiction. Filed December 6, 1897.*

FRITZ CONTZEN
*v.*
THE UNITED STATES ET AL. } No. 3358.

Defendants' plea.

Now comes the assistant attorney general and, after leave of the court first had and obtained, for plea to the declaration filed herein says that the claimant ought not to have and maintain his aforesaid action, because he was not at the date of the depredation therein alleged a citizen of the United States, and this court is therefore without jurisdiction to hear and determine the aforesaid cause.

And this the defendants are ready to verify.

JOHN G. THOMPSON,
*Assistant Attorney General.*

6 IV.—*Agreed Statement of Facts.*

FRITZ CONTZEN
*v.*
THE UNITED STATES ET AL. } No. 3358.

The claimant, Fritz Contzen, was born in Germany on the 27th day of February, 1831, and emigrated to Texas in July, 1845. He remained in Texas until the admission of the State into the Union, December 29, 1845.

Since the admission of Texas, the claimant has resided continuously in the United States, mostly in Arizona and some time in California. He visited Germany with his wife and child from 1873 to 1880, his home and furniture remaining all the time in this country. He was married in the United States. His residence was in Texas until he came to Arizona, in 1855, with Major Emory, on the boundary commission.

In the year 1854 he went into court at San Antonio, Texas, and he was told that he being a resident of Texas when it became part of the United States, that made him a citizen of the United States, and he voted there. He never took any further steps about naturalization. There is no record of naturalization from 1847 on of any one of the claimant's name, when such record should appear in the courts of San Antonio.

That in October, 1861, the defendant Indians were in amity with the United States.

JOHN G. THOMPSON,
*Ass't Att'y Gen.*

SMITH,
A. T. BRITTON,
*Att'y for Claimant.*

J. W. DOUGLASS, *Counsel.*

Ordered that this statement may be embraced in the record on appeal as the finding of facts.

BY THE COURT.

7 *Opinion of the Court.*

DAVIS, J., delivered the opinion of the court.

Defendants plead that plaintiff was not a citizen of the United States in 1861, when the alleged loss at the hands of Indians in Texas was sustained, and, therefore, the court is without jurisdiction to consider the case.

Plaintiff, a native of Germany, went to Texas in July, 1845, shortly before the admission of Texas as a State into the Union. He says he made a preliminary declaration of intent to become a citizen in San Antonio in 1854. No further evidence as to his naturalization is given, but evidence is introduced by the defendants tending to show the absence of any record of naturalization, from 1847 on, of any one of plaintiff's name in the courts of San Antonio, Tex., where such record should appear if it exist.

Plaintiff urges that by the admission of Texas to the Union, as he was then an "inhabitant" of the State, he became a citizen of the United States. When the State was admitted, December 29, 1845 (9 S. L., 108), plaintiff was not a citizen, but a German subject lately arrived in Texas. He was on that date physically an inhabitant of the State, but he was not a citizen of the State.

The constitution of Texas decrees: "All persons (Africans, the descendants of Africans, and Indians excepted) who were residing in Texas on the day of the declaration of independence shall be considered citizens of the Republic." (Sec. 10.) The date of the declaration of independence was March 2, 1836.

Plaintiff went to Texas in July, 1845, less than six months before December 29, 1845, the date when the State was admitted to the Union. At the date of this admission of the State, then, he was a German subject residing in Texas.

It is not to be assumed that Texas intended that through a general statute all aliens within their territorial jurisdiction should become citizens without the opportunity or right on their part to exercise any volition.

The statute purports to naturalize all inhabitants of Texas who were such March 2, 1836, the day of the declaration of independence. Plaintiff, however, was not then an inhabitant of Texas, as he first went there in July, 1845. It is incumbent upon plaintiff to prove affirmatively that he has been naturalized as a citizen of the United States. This he has not done, and the petition is dismissed.

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VI.—*Judgment of the Court.*

FRITZ CONTZEN
*vs.*
THE UNITED STATES and APACHE INDIANS. } No. 3358. Indian Depredation.

At a Court of Claims held in the city of Washington on the 31st day of May, 1898, it was ordered that the defendants' plea to the jurisdiction be sustained; and it was further ordered, adjudged, and decreed that the petition of the claimant be dismissed.

BY THE COURT.

VII.—*Application for and Allowance of Appeal.*

FRITZ CONTZEN
*vs.*
UNITED STATES and APACHE INDIANS. } No. 3358. Ind. Dep.

Now comes the claimant, by his attorney of record, and moves the court for the allowance of an appeal from the judgment of the said court in the above-stated case, entered May 31, 1898, to the Supreme Court of the United States.

A. T. BRITTON, *Att'y.*

JOHN W. DOUGLASS, *Counsel.*

Filed June 29, 1898.

And now, to wit, June 12, 1899, on motion of claimant's counsel, the appeal is allowed as prayed for.

BY THE COURT.

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In the Court of Claims.

FRITZ CONTZEN
*vs.*
THE UNITED STATES and APACHE INDIANS. } No. 3358. Ind. Dep.

I, John Randolph, assistant clerk of the Court of Claims, certify that the foregoing are true transcripts of the pleadings, of the findings of fact, of the opinion of the court, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

Seal Court of Claims.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims, at Washington, D. C., this 19 day of June, A. D. 1899.

JOHN RANDOLPH,
*Ass't Clerk, Ct. of Claims.*

Endorsed on cover: File No. 17,444. Court of Claims. Term No., 330. Fritz Contzen, appellant, *vs.* The United States and The Apache Indians. Filed June 22nd, 1899.